

## STATEMENT OF PROPOSED CONSTITUTIONAL AMENDMENTS

September 30, 2006

In compliance with R.S. 18:431, R.S. 18:552, R.S. 18:553 and R.S. 18:1306, a statement of the Proposed Constitutional Amendments in the order in which they will appear on the ballot for the September 30, 2006 election is provided as follows:

### **1. Act 69 (2005 First Extraordinary Session) amends Article VII, Sections 10(D)(2)(e), 10.2, and 10.5(B) and (C).**

**Present Constitution** provides that the Revenue Estimating Conference shall prepare estimates of money to be received by the state general fund and dedicated funds which are recurring and which are nonrecurring. Except as otherwise provided by this constitution, the appropriation or allocation of any money designated in the official forecast as nonrecurring shall be made only for the following purposes: (1) retiring or for the defeasance of bonds in advance or in addition to the existing amortization requirements of the state; (2) providing for payments against the unfunded accrued liability of the public retirement systems which are in addition to any payments required for the annual amortization of the unfunded accrued liability; (3) providing funding for capital outlay projects in the comprehensive state capital budget; (4) providing for allocation or appropriation for deposit into the Budget Stabilization Fund; (5) providing for allocation or appropriation for deposit into the Wetlands Conservation and Restoration Fund; and (6) providing for new highway construction projects for which federal matching funds are available, without excluding highway projects eligible as capital projects under this constitution.

**Present Constitution** established in the state treasury the Wetlands Conservation and Restoration Fund to provide a dedicated, recurring source of revenues for the development and implementation of a program to conserve and restore Louisiana's vegetated wetlands.

**Proposed Constitutional Amendment** changes the name of the Wetlands Conservation and Restoration Fund to the Coastal Protection and Restoration Fund.

Also changes the purpose of the fund from the development and implementation of a program to conserve and restore Louisiana's vegetated wetlands to the development and implementation of a program to protect and restore Louisiana's coastal area.

**Present Constitution** provides that money in the Wetlands Conservation and Restoration Fund may be appropriated for purposes consistent with the Wetlands Conservation and Restoration Plan developed by the Wetlands Conservation and Restoration Authority, or its successor.

**Proposed Constitutional Amendment** provides that the money in the Coastal Protection and Restoration Fund may be appropriated for purposes consistent with the Coastal Protection Plan developed by the Coastal Protection and Restoration Authority, or its successor.

**Proposed Constitutional Amendment** provides that subject to the requirements of the Bond Security and Redemption Fund and the Louisiana Education Quality Trust Fund, in each fiscal year, federal revenues received by the state generated from Outer Continental Shelf oil and gas activity and eligible, as provided by federal law, shall be deposited and credited by the treasurer to the Coastal Protection and Restoration Fund to be used only for the purposes of coastal protection, including conservation, coastal restoration, hurricane protection, and infrastructure directly impacted by coastal wetland losses.

**Proposed Constitutional Amendment** further provides that the fund balance limitation provided in Article VII, Section 10.2(B) of this constitution, relative to the mineral revenues deposited to this fund, that requires that the fund balance shall not exceed an amount as provided by law and that the amount

shall not be less than five hundred million dollars does not apply to revenues deposited into the Coastal Protection and Restoration Fund generated from Outer Continental Shelf oil and gas activity.

**2. Act 854 (2006 Regular Session) adds Article VII, Section 10.2(F) and repeals Article VII, Section 10.11.**

**Proposed Constitutional Amendment** repeals the Louisiana Coastal Restoration Fund and requires that 20% in the aggregate of the revenues received as a result of the tobacco settlement securitization occurring after July 1, 2006 shall be transferred into the Coastal Protection and Restoration Fund.

**Proposed Constitutional Amendment** provides that the legislature may appropriate up to 20% of the funds deposited into the Coastal Protection and Restoration Fund to the Barrier Island Stabilization and Preservation Fund to be used for purposes of the Louisiana Coastal Wetlands Conservation and Restoration Program.

**Proposed Constitutional Amendment** further provides that the fund balance limitation provided in Article VII, Section 10.2(B) of this constitution, relative to the mineral revenues deposited to this fund, that requires that the fund balance shall not exceed an amount as provided by law and that the amount shall not be less than five hundred million dollars does not apply to revenues deposited into the Coastal Protection and Restoration Fund received as a result of the tobacco settlement securitization.

**3. Act 43 (2006 First Extraordinary Session) amends Article VI, Sections 38(A)(1) and 39 and adds Article VI, Section 38.1.**

**Present Constitution** authorizes the legislature to provide by law for the consolidation, division, or reorganization of existing levee districts or the creation of new levee districts.

**Proposed Constitutional Amendment** retains present law and authorizes the legislature to establish by law regional flood protection authorities with territorial jurisdiction limited to parishes and levee districts which are situated entirely or partially within the coastal zone as described in R.S. 49:214.24 as of the effective date of this proposed constitutional amendment and provide for their territorial jurisdiction.

**Present Constitution** requires the members of the board of commissioners of a district to be appointed or elected from among residents of the district, as provided by law.

**Proposed Constitutional Amendment** provides an exception to the requirement that the members of the board of commissioners be appointed or elected from among residents of the district, as provided by law, for the board of commissioners of a regional flood protection authority.

**Proposed Constitutional Amendment** authorizes the legislature by law to establish regional flood protection authorities and provide for their territorial jurisdiction, governing authority, powers, duties, and functions for the purpose of constructing and maintaining levees, levee drainage, flood protection, and hurricane flood protection within the territorial jurisdiction of the authority and for other purposes incidental thereto. Further provides that each authority shall be governed by a board of commissioners which shall also be the governing authority of each levee district within the territorial jurisdiction of the authority.

**Proposed Constitutional Amendment** also authorizes the legislature by law to include within the territorial jurisdiction of the regional flood protection authority one or more parishes or portions of parishes which are included in one or more levee districts that are not included within the territorial jurisdiction of the authority. Further provides that the inclusion of parishes or portions of parishes shall

not affect the authority of the respective levee district: (a) to levy taxes in such areas nor prohibit the levy of taxes as provided in this proposed constitutional amendment in such areas, (b) to employ and provide for its employees, or (c) to own, construct, and maintain its property.

**Proposed Constitutional Amendment** authorizes the board of commissioners of the authority to levy annually property taxes on property that is not exempt from taxation situated within the territorial jurisdiction of the authority. Provides that the necessity and the levy and rate of the tax or any increase shall be subject to the constitutional provisions on homestead exemptions and exemption from ad valorem taxation, and requires submission of the proposed tax or increase to the electors within the authority. Further provides that the tax or increase shall take effect only if approved by: (1) a majority of the electors voting within that authority, and (2) each of the parishes in that authority by a majority of the electors voting in each parish, in an election held for that purpose.

**Proposed Constitutional Amendment** authorizes the legislature to appropriate up to \$500,000 annually to regional flood protection authorities from the Coastal Protection and Restoration Fund. Also provides that no action taken under this proposed constitutional amendment shall impair the obligation of outstanding bonded indebtedness or any other contract of a levee district.

**Proposed Constitutional Amendment** also includes regional flood protection authorities in the definition of "levee district".

**Present Constitution** authorizes the governing authority of a levee district to levy annually a tax not to exceed 5 mills for the purpose of constructing and maintaining levees, levee drainage, flood protection, hurricane flood protection and other purposes incidental thereto, with the exception of the Board of Levee Commissioners of the Orleans Levee District which may levy annually a tax not to exceed 2 and 1/2 mills. Further provides that the tax may be increased if the necessity to raise additional funds arises in any levee district for any purpose set forth above or for any other purpose related to the district's authorized powers and functions as specified by law. Also provides that the necessity and the rate of tax increase shall be submitted to the electors of the district and the increase shall take effect only if approved by a majority of the electors voting in an election held for that purpose.

**Proposed Constitutional Amendment** retains present law for the levee districts created prior to January 1, 2006.

**Proposed Constitutional Amendment** applies to the governing authority of a levee district created after January 1, 2006, and authorizes the governing authority to annually levy a tax on all property not exempt from taxation situated within the alluvial portions of the district subject to overflow for the purpose of constructing and maintaining levees, levee drainage, flood protection, hurricane flood protection, and for all other purposes incidental thereto. However, a district shall not levy such a tax or increase the rate of such tax unless the levy or increase is approved by a majority of the electors of the district who vote in an election held for that purpose. Also provides that the approval by a majority of the electors who vote in each parish comprising the district is required for any such levy or increase if the district is comprised of territory in more than one parish.

#### **4. Act 853 (2006 Regular Session) amends Article VI, Section 42(A) and adds Article I, Section 4(G).**

**Present Constitution** provides that every person has the right to acquire, own, control, use, enjoy, protect and dispose of private property subject to reasonable statutory restrictions and reasonable exercise of the police power.

**Present Constitution** further provides that property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. Further provides that a party in every expropriation has the right to trial by jury to determine compensation and the owner shall be compensated to the full extent of his loss. Also provides that no business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction. Also provides that this section of this constitution shall not apply to appropriation of property necessary for levee and levee drainage purposes.

**Present Constitution** further provides that the legislature may place limitations on the extent of recovery for the taking of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation or restoration activities.

**Proposed Constitutional Amendment** retains present law and provides that compensation paid for the taking of, or loss or damage to, property rights for the construction, enlargement, improvement, or modification of hurricane protection projects, including mitigation, shall not exceed the compensation required by the Fifth Amendment of the Constitution of the United States of America (just compensation). Further provides that this proposed constitutional amendment shall not apply to compensation paid for a building or structure that was destroyed or damaged by an event for which a presidential declaration of major disaster or emergency was issued, if the taking occurs within 3 years of such event. Also provides that the legislature may provide by law for the procedures and definitions for the provisions of this proposed constitutional amendment.

**Present Constitution** provides that land and improvements actually used or destroyed for levees or levee drainage purposes shall be paid for as provided by law and that nothing contained in the present constitutional provision with respect to compensation for lands and improvements shall apply to batture or to property the control of which is vested in the state or any political subdivision for the purpose of commerce. Further provides that a district shall levy on all taxable property within the district a tax sufficient to pay for property used or destroyed to be used solely in the district where collected if the district has no other funds or resources from which the payment can be made.

**Proposed Constitutional Amendment** retains present law and provides that payment for lands and improvements actually used or destroyed in the construction, enlargement, improvement, or modification of hurricane protection projects, including mitigation, shall not exceed the amount of compensation authorized under the proposed constitutional amendment, Article I, Section 4(G) (just compensation).

**5. Act 851 (2006 Regular Session) amends Article I, Section 4(B), Article VI, Section 21(A) and adds Article VI, Section 21(D).**

**Present Constitution** provides that property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. Further provides that a party in every expropriation has the right to trial by jury to determine compensation and the owner shall be compensated to the full extent of his loss. Also provides that no business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction. Also

provides that this section of this constitution shall not apply to appropriation of property necessary for levee and levee drainage purposes.

**Proposed Constitutional Amendment** retains existing law and provides that except for purposes of industrial development, establishing and furnishing industrial plants, operation of public ports or providing movable or immovable property for pollution control facilities, property shall not be taken or damaged by the state or its political subdivisions for predominant use by any private person or entity or for the transfer of ownership to any private person or entity.

**Proposed Constitutional Amendment** limits “public purpose” to the following: (1) a general public right to a definite use of the property; (2) continuous public ownership of property dedicated to one or more of the following objectives and uses, (a) public buildings in which publicly funded services are administered, rendered, or provided, (b) roads, bridges, waterways, access to public waters and lands, and other public transportation, access, and navigational systems available to the general public, (c) drainage, flood control, levees, coastal and navigational protection and reclamation for the benefit of the public generally, (d) parks, convention centers, museums, historical buildings and recreational facilities generally open to the public, (e) public utilities for the benefit of the public generally, (f) public ports and public airports to facilitate the transport of goods or persons in domestic or international commerce; (3) the removal of a threat to public health or safety caused by the existing use or disuse of the property.

**Proposed Constitutional Amendment** further provides that neither economic development, enhancement of tax revenue, or any incidental benefit to the public shall be considered in determining whether the taking or damaging of property is for a public purpose.

**Present Constitution** provides in every expropriation that a party has the right to trial by jury to determine compensation and the owner shall be compensated to the full extent of his loss.

**Proposed Constitutional Amendment** provides that in every expropriation or action to take property, a party has the right to trial by jury to determine whether the compensation is just and the owner shall be compensated to the full extent of his loss. Further provides that the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation, except as otherwise provided in this constitution.

**Present Constitution** provides that any political subdivision, deep-water port commission, or deep-water port, harbor, and terminal district may issue bonds; acquire, through purchase, donation, exchange, and expropriation, and improve industrial plant buildings and industrial plant equipment, machinery, furnishings, and appurtenances; and sell, lease, lease-purchase, or demolish all or any part of the foregoing to: (1) induce and encourage the location of or addition to industrial enterprises which would have economic impact upon the area and the state, (2) provide for the establishment and furnishing of such industrial plant, or (3) provide movable or immovable property for pollution control facilities.

**Proposed Constitutional Amendment** changes deep-water port commission to public port commission and deep-water port, harbor, and terminal district to public port, harbor, and terminal district. Further provides for the facilitation of the operation of public ports as a reason for authority to take action pursuant to Article VI, Section 21(A), and authorizes any political subdivision, public port commission or public port, harbor, and terminal district to include public port facilities and operations which relate to or facilitate the transportation of goods in domestic and international commerce, in acquiring and improving industrial plant buildings and industrial plant equipment, machinery, furnishings, and appurtenances. Also provides an exception to expropriation for the “bona fide homestead”, as defined in this constitution.

## **6. Act 859 (2006 Regular Session) adds Article I, Section 4(G).**

**Present Constitution** provides that every person has the right to acquire, own, control, use, enjoy, protect and dispose of private property subject to reasonable statutory restrictions and reasonable exercise of the police power.

**Present Constitution** further provides that property shall not be taken or damaged by the state or its political subdivision except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. Further provides that a party in every expropriation has the right to trial by jury to determine compensation and the owner shall be compensated to the full extent of his loss. Also provides that no business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction. Also provides that this section of this constitution shall not apply to appropriation of property necessary for levee and levee drainage purposes.

**Present Constitution** further provides that the legislature may place limitations on the extent of recovery for the taking of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation or restoration activities.

**Proposed Constitutional Amendment** provides that the state or its political subdivisions shall not sell or lease property which has been expropriated and held for not more than 30 years without first offering the property to the original owner or his heir, or, if there is no heir, to the successor in title to the owner at the time of expropriation at the current fair market value, after which the property can only be transferred by competitive bid open to the general public, except for leases or operation agreements for port facilities, highways, qualified transportation facilities or airports. The state or political subdivision may sell or otherwise transfer the property as provided by law after 30 years have passed from the date the property was expropriated.

**Proposed Constitutional Amendment** further provides that the state or its political subdivision which expropriated the property is required to identify all property which is not necessary for the public purpose of the project and declare the property as surplus property within 1 year after completion of the project for which the property was expropriated.

**Proposed Constitutional Amendment** further provides that within 2 years after completion of the project that all expropriated property identified as surplus property shall be offered for sale to the original owner or his heir, or, if there is no heir, to the successor in title to the owner at the time of expropriation at the current fair market value. Authorizes the surplus property to be offered for sale to the general public by competitive bid if the original owner, heir, or other successor in title refuses or fails to purchase the surplus property within 3 years from completion of the project.

**Proposed Constitutional Amendment** further provides that the original owner or his heir, or, if there is no heir, the successor in title to the owner at the time of expropriation may petition the state or its political subdivision which expropriated the property to have all or any portion of his property declared surplus after 1 year from the completion of the project for which the property was expropriated. Authorizes the original owner or the successor in title to petition any court of competent jurisdiction to have the property declared surplus if the state or its political subdivision refuses or fails to identify all or any portion of the expropriated property as surplus.

## **7. Act 857 (2006 Regular Session) amends Article VII, Section 14(B).**

**Present Constitution** prohibits the state or any political subdivision from loaning, pledging or donating any funds, credit, property, or things of value to any person, association, or corporation, public or private, except as specifically provided in this constitution. Prohibits the state or a political subdivision from subscribing to or purchasing the stock of a corporation or association or for any private enterprise with specific exceptions.

**Proposed Constitutional Amendment** retains present law and provides an exception that authorizes the investment in equities of up to 35% of the Medicaid Trust Fund for the Elderly.

**8. Act 70 (2005 First Extraordinary Session) adds Article VII, Sections 18(G)(5) and 20(A)(10).**

**Proposed Constitutional Amendment** authorizes an owner to keep a special assessment level of the homestead prior to its damage or destruction on the repaired or rebuilt homestead if the owner is unable to occupy the homestead on or before December 31st of a future calendar year due to damage or destruction of the homestead caused by a disaster or emergency declared, if the repaired or rebuilt homestead is reoccupied by the owner within 5 years from December 31st of the year following the disaster. Further provides that the assessed value of the land and buildings on which the homestead was located prior to its damage shall not be increased above its assessed value immediately prior to the damage or destruction.

**Proposed Constitutional Amendment** prohibits a property owner from keeping the special assessment level on the damaged or destroyed property if the property owner receives a homestead exemption on another homestead during the same 5-year period, and requires the land and buildings to be assessed in that year at the percentage of fair market value set forth in this constitution. Further provides that the owner must maintain the homestead exemption set forth in the proposed constitutional amendment, Article VII, Section 20(A)(10), to qualify for the special assessment level.

**Proposed Constitutional Amendment** provides that any homestead receiving the homestead exemption that is damaged or destroyed during a disaster or emergency declared by the governor whose owner is unable to occupy the homestead on or before December 31st of a calendar year due to such damage or destruction shall be entitled to claim and keep the exemption by filing with the assessor prior to December 31st of the year in which the exemption is claimed an annual affidavit of intent to return and reoccupy the homestead within 5 years from December 31st of the year following the disaster. Further provides that only one homestead exemption shall extend or apply to any person in this state.

**9. Act 855 (2006 Regular Session) amends Article VI, Section 14.**

**Present Constitution** prohibits a law or state executive order, rule, or regulation requiring increased expenditures for any purpose from becoming effective within a political subdivision until approved by the governing authority of the affected political subdivision or until the legislature appropriates and provides sufficient funds for the purpose to the affected political subdivision or until a law provides a local source of revenue for the purpose and the affected political subdivision is authorized to levy and collect such revenue. This prohibition does not apply to a school board.

**Present Constitution** further provides that the prohibition shall not apply to: (1) a law requested by the governing authority of the affected political subdivision; (2) a law defining a new crime or amending an existing crime; (3) a law enacted and effective prior to 1991; (4) a law enacted, or state executive order, rule, or regulation promulgated to comply with a federal mandate; (5) a law providing for civil service, minimum wages, hours, working conditions, and pension and retirement benefits, or vacation or sick leave benefits for firemen and municipal policemen; (6) any instrument adopted or enacted by 2/3 of the

elected members of both houses of the legislature and any rule or regulation adopted pursuant to such instrument; or (7) a law having insignificant fiscal impact on the affected political subdivision.

**Proposed Constitutional Amendment** provides that no law requiring increased expenditures within a city, parish, or other local public school system for any purpose shall become effective within the school system only as long as the legislature appropriates and provides funds for the purpose to the affected school system, or until a law provides a local source of revenue within the school system for the purpose and the school board is authorized by ordinance or resolution to levy and collect such revenue. Further provides that this shall not apply to: (1) a law requested by the school board of the affected school system; (2) a law defining a new crime or amending an existing crime; (3) a law enacted and effective prior to the adoption of this amendment by the electors of the state in 2006; (4) a law enacted to comply with a federal mandate; (5) any instrument enacted by 2/3 of the elected members of each house of the legislature; (6) a law having insignificant fiscal impact on the affected school system; (7) the formula for the Minimum Foundation Program of education nor any instrument enacted by the legislature approving such formula; or (8) any law relative to the implementation of the state school and district accountability system.

#### **10. Act 856 (2006 Regular Session) amends Article VII, Section 14(B).**

**Present Constitution** prohibits the state or any political subdivision from loaning, pledging or donating any funds, credit, property, or things of value to any person, association, or corporation, public or private, except as specifically provided in this constitution. Prohibits the state or a political subdivision from subscribing to or purchasing the stock of a corporation or association or for any private enterprise with specific exceptions.

**Proposed Constitutional Amendment** retains present law and provides an exception that authorizes the investment in stocks of up to 35% of the public funds endowed of the state-funded permanently endowed funds of a public or private college or university.

#### **11. Act 852 (2006 Regular Session) amends Article VII, Section 20(A)(3) and (5).**

**Present Constitution** extends the homestead exemption to property owned by an irrevocable trust when the principal beneficiary or beneficiaries of the trust are the settlor or settlors of the trust and were the immediate prior owners of the homestead and the homestead is occupied by a principal beneficiary.

**Proposed Constitutional Amendment** eliminates the requirement that the trust be irrevocable.

**Present Constitution** extends the homestead exemption to a natural person or persons and to an irrevocable trust created by a natural person or persons, in which the beneficiaries of the trust are a natural person or persons.

**Proposed Constitutional Amendment** eliminates the requirement that the trust be irrevocable.

#### **12. Act 858 (2006 Regular Session) amends Article IV, Sections 15 and 16.**

**Present Constitution** provides that if a vacancy occurs in the office of lieutenant governor, the governor shall nominate a lieutenant governor, who shall take office upon confirmation by a majority vote of the elected members of each house of the legislature.

**Proposed Constitutional Amendment** additionally requires that if the unexpired term of the lieutenant governor exceeds 1 year, the person confirmed by the legislature shall serve as lieutenant governor only until the office is filled by election as provided in the proposed constitutional amendment below.



**Present Constitution** provides that a vacancy in a statewide elective office other than governor or lieutenant governor shall be filled by the first assistant. Further provides that if the unexpired term exceeds 1 year, the office shall be filled by election at the next regularly scheduled congressional or statewide election and the first assistant shall serve until the person elected takes office.

**Proposed Constitutional Amendment** additionally provides that if the unexpired term exceeds 1 year, the first assistant shall serve only until the person elected as provided in the proposed constitutional amendment below takes office.

**Proposed Constitutional Amendment** provides that if the unexpired term exceeds 1 year, the office shall be filled by election at the next regularly scheduled congressional or statewide election; however, if no such election date is available within 1 year of the vacancy, the office shall be filled by election at a special election called by the governor for such purpose.

### **13. Act 860 (2006 Regular Session) amends Article V, Section 24.**

**Present Constitution** provides the qualifications for judges and requires that a judge of the supreme court, court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in the state of Louisiana for at least 5 years prior to his election.

**Proposed Constitutional Amendment** changes the qualifications for judges and requires that a person shall have been admitted to the practice of law in the state of Louisiana for at least the number of years specified as follows: (1) for the supreme court or a court of appeals – 10 years; (2) for a district court, family court, parish court, or court having solely juvenile jurisdiction – 8 years.

**Present Constitution** requires a judge to have been domiciled in the district, circuit, or parish for 2 years preceding election.

**Proposed Constitutional Amendment** changes the requirement for a judge to have been domiciled in the district, circuit, or parish from 2 years preceding election to 1 year preceding election.